Ct. at 2330-2331. "Requiring [CARE USA's foreign affiliates] to continue to adhere to the Policy Requirement results in inconsistent messaging by the CARE global federation, dilution of our brand and its collective voice, destruction of our common approach, and impairment of our ability to collaboratively accomplish our mission." JA1934 (CARE Decl.). Under the government's approach, Appellees would thus be free to voice views contrary to those of the government or to remain neutral "only at the price of evident hypocrisy," *AOSI*, 133 S. Ct. at 2331—a result the Supreme Court has already rejected.

B. The Government's Arguments Are Foreclosed By The Supreme Court's Decision And Otherwise Lack Merit

The government makes several attempts to escape the import of the Supreme Court's holding. All are either foreclosed by the Court's decision or otherwise meritless.

1. This appeal does not involve the First Amendment rights of foreign persons or incidental effects on U.S. persons of a speech restriction imposed on others

The government emphasizes (at 17-18, 21-23) that Appellees' foreign affiliates lack First Amendment rights of their own and contends that the Policy Requirement is therefore not unconstitutional as applied to those foreign organizations. But as the government acknowledges (at 17-18, 23), there is "no dispute" for present purposes that foreign actors outside the United States have no First Amendment rights; that point is simply irrelevant in this case. The injunction

and the Supreme Court's decision protect "the *domestic NGO's* constitutional right." SPA10 (emphasis in original). They do not extend constitutional rights to non-U.S. persons outside the United States, but instead recognize that "whether the affiliate is foreign or domestic has no bearing" on the violation of the "domestic NGO's rights" that occurs when the domestic NGO is forced to "express[] contrary positions on the same matter through different organizational components." SPA9.

The cases the government cites (at 22) dealing with the rights of non-citizens in the immigration context are thus inapposite. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (habeas corpus right available to alien held on potentially indefinite basis pending deportation); *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904) (First Amendment claim by excludable alien outside of the U.S.); *see also United States v. Verdugo-Urquidez*, 494 U.S. 259, 262 (1990) (addressing Fourth Amendment claim by alien outside the United States with no voluntary ties to United States).

The government relies heavily (at 22, 27) on *Kleindienst v. Mandel*, 408 U.S. 753 (1972), another immigration case, noting that the plaintiffs in that case were U.S. persons who argued that their First Amendment rights were violated by the government's refusal to allow a foreign professor to enter the country to give a lecture. *Id.* at 756-761. But this is a far cry from the compelled-speech situation in this case, and as the government has lately acknowledged, *Mandel* stands for the

particular proposition, special to the immigration context and irrelevant here, that courts are reluctant to "look behind the [government's] exercise of … discretion" in deciding who may enter the country—*i.e.*, at the decision point where the government's "plenary power" in such matters is at its apex. *Id.* at 769-770; *see also* U.S. Cert. Pet., *Trump v. International Refugee Assistance Project*, No. 16-1436 (U.S. June 1, 2017). Of course, this is not an immigration case. Moreover, the U.S. plaintiffs in *Mandel* premised their First Amendment claim on a mere desire to associate with a foreign person—an interest that is always at play whenever any alien seeks to enter the United States and that is far weaker than Appellees' interests in avoiding the impact of a government-mandated pledge here. 408 U.S. at 768. Finally, the Court in *Mandel* limited its holding to situations where the government offered an otherwise "facially legitimate and bona fide reason" for the challenged conduct. *Id.* at 770. But the conduct Appellees are challenging is enforcement of a compelled-speech measure that the Supreme Court has already invalidated.

The government's reliance (at 23-31) on the so-called "global gag rule" cases—two cases from this Court, and one from the D.C. Circuit, all of which were decided years before the Supreme Court's decision here—likewise fails. Like *Rust*, and unlike this case, those cases involved speech restrictions that left grant

recipients free to express themselves as they wished while acting on their "own time and dime." *AOSI*, 133 S. Ct. at 2330.

As implemented by USAID, the "global gag rule" (also known as the "Mexico City policy") provided that foreign NGOs "receiving assistance for family planning from [US]AID must certify" that they do not perform or "actively promote" abortions. *Planned Parenthood Fed'n of Am., Inc. v. USAID*, 915 F.2d 59, 61 (2d Cir. 1990). The policy thus restricted the speech of foreign NGOs that received federal funds by precluding them from "actively promot[ing]" abortion, but did not compel them to affirm their belief in the government's viewpoint. This Court rejected a challenge to the policy in *Planned Parenthood* and again in *Center for Reproductive Law & Policy v. Bush*, 304 F.3d 183 (2d Cir. 2002) ("*CRLP*"), as did the D.C. Circuit in *DKT Memorial Fund Ltd. v. USAID*, 887 F.2d 275 (D.C. Cir. 1989).

In this case, the government cited *Planned Parenthood* and *DKT* in its 2006 appeal to this Court challenging the preliminary injunction, *see* Appellants' Br. 51, No. 06-4035-cv (2d Cir. Nov. 13, 2006), and cited *DKT* again in the Supreme Court, *see* U.S. Br. 23, No. 12-10 (U.S. Feb. 25, 2013) (JA1709). Those cases did not save the Policy Requirement then, and their force is further diminished in this case now that the Supreme Court has ruled against the government. Indeed, those cases differ from this one in two key ways.

First, they did not involve compelled speech and thus did not address a First Amendment harm that by definition could not be confined within the scope of the federally funded program. In *Planned Parenthood*, for example, the U.S. organizations argued that the policy restricting the speech of foreign NGOs effectively restricted the ability of U.S. entities to "engage in abortion-related activities abroad" by deterring "many of the most logical and effective partners.'" 915 F.2d at 62; *see also DKT*, 887 F.2d at 295 (noting argument that policy made it harder for U.S. NGO to find foreign partners). But requiring certain foreign entities to remain silent did not hinder the U.S. plaintiffs from expressing views different from the government's, did not associate the U.S. plaintiffs with the government's message, and did not otherwise prevent the U.S. plaintiffs from exercising their First Amendment rights. *Planned Parenthood*, 915 F.2d at 62 (citing *Regan*, 461 U.S. at 549).[8] A compelled-speech condition like the Policy Requirement, in contrast, cannot be cabined to a particular program or a particular affiliate; forcing some affiliates to adopt a particular message causes First Amendment harms to the clearly identified U.S. affiliates, which can express

[8] This Court's subsequent decision in *CRLP* simply readopted the reasoning of *Planned Parenthood*. *See* 304 F.3d at 187, 189 ("*Planned Parenthood* not only controls this case conceptually; it presented the same issue."). And *DKT* considered the same facts and arguments. *See* 887 F.2d at 277-279. Moreover, the D.C. Circuit in *DKT* did not even reach a holding on the domestic NGO's First Amendment claim, finding instead that the Court lacked jurisdiction because the NGO had suffered no actual injury. *Id.* at 295-297.

themselves "only at the price of evident hypocrisy." *AOSI*, 133 S. Ct. at 2331. The "gag rule" cases considered only a speech restriction that could not taint the speech of the U.S. plaintiffs in the manner the Supreme Court identified here, and thus do not control.

Second, unlike the affiliates at issue in this case, the "gag rule" cases did not involve co-branded, clearly identified affiliates that share a common identity with U.S. organizations. As discussed, Appellees work through affiliates that together speak with one voice and appear as single entities; they sometimes perform their foreign operations through separately incorporated affiliates largely because local rules or the pressures of the USAID Forward initiative require it. *Supra* pp. 6-8. In contrast, the U.S. organizations in the "gag rule" cases sought to initiate working relationships with existing foreign entities that shared no common identity and to which they otherwise bore little or no connection. *E.g.*, *Planned Parenthood*, 915 F.2d at 63. In those cases, there was no risk to the U.S. plaintiffs of any misattribution or evident hypocrisy of the sort the Supreme Court found in this case because there was no clearly identified affiliate relationship. Wishing to work with an unrelated foreign organization is a far cry from the situation where, for example, members of the Pathfinder family are forced to take a pledge that U.S.-based Pathfinder wishes to avoid and cannot effectively disclaim. The Supreme Court was thus unmoved by the "gag rule" cases here and correct to find

that an affiliate's compelled adoption of the government's view would be imputed to the clearly identified U.S. affiliate, thereby tainting and restricting the U.S. affiliate's speech—a dynamic that was completely absent in the "gag rule" cases.

The government imagines (at 38) that the district court's analysis would allow a hypothetical foreign NGO lacking constitutional rights of its own to circumvent the Policy Requirement by creating sham U.S.-based affiliates or "find[ing] a U.S.-based organization willing to 'affiliate' with it." That speculation has no basis. The Leadership Act has been in effect since 2003 and there is no record of such a problem. Nor could there be. The government controls grant criteria, which effectively preclude such sham operations. Leadership Act grants are extremely competitive, and among the most important criteria the government considers in evaluating an application is the applicant's "past performance" in implementing other grants going back three years. USAID, ADS 303.3.9 (rev. Apr. 3, 2017), *available at* https://www.usaid.gov/sites/default/files/documents/1868/303.pdf; *supra* p. 13. Both a hypothetical shell organization applying for a Leadership Act grant and a purely foreign NGO seeking to "associate" with a hypothetical shell organization applying for a Leadership Act grant would face virtually insurmountable obstacles to winning it. But even if the government's speculation had any basis, it would not justify depriving Appellees here—U.S.

organizations whose *bona fides* and clear identification with their affiliates are beyond dispute—of the protection the Supreme Court has held necessary.

Finally, the government's defense (at 21) of the Policy Requirement "as applied" to Appellees' foreign affiliates ignores the comprehensive nature of the Supreme Court's ruling. "Once a constitutional violation is found, a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" *Hills v. Gautreaux*, 425 U.S. 284, 293-294 (1976) (quoting *Milliken v. Bradley*, 418 U.S. 717, 744 (1974)). Where "the arguments and evidence show that a statutory provision is unconstitutional on its face, an injunction prohibiting its enforcement is proper." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2307 (2016). Here, as the district court observed, the Supreme Court invalidated the Policy Requirement in categorical terms that contemplate "no constitutional application of the Policy Requirement as to domestic NGOs or their affiliates." SPA14. In the Supreme Court's words, "[t]he Policy Requirement compels as a condition of federal funding the affirmation of a belief that by its nature cannot be confined within the scope of the Government program. In so doing, it violates the First Amendment and cannot be sustained." *AOSI*, 133 S. Ct. at 2332. The scope of the injunction reflects the scope of the First Amendment violation the Court found and the First Amendment harms the Court identified. The government's continued attempts to enforce the Policy

Requirement as applied to affiliates of the U.S.-based Appellees cannot be squared with the Court's unqualified holding that the Policy Requirement "violates the First Amendment and cannot be sustained." *AOSI*, 133 S. Ct. at 2332.

2. The government mischaracterizes the Supreme Court's decision

The government's remaining arguments either misread the Supreme Court's opinion or seek to relitigate points the Court already decided. To start, the government contends that the Supreme Court, in rejecting the government's reliance on the affiliate guidelines, addressed only whether Appellees' affiliates could serve as an adequate alternative channel for Appellees to express views contrary to the government's while complying with the Policy Requirement themselves. *See, e.g.*, Br. 32 (contending that the Supreme Court held "simply" that "allowing U.S. entities that receive federal funding, and therefore must comply with the policy requirement, to form affiliated organizations as an alternative means of engaging in their own expression does not alleviate the First Amendment burden"). But that was not the only argument the Court rejected. As discussed, *supra* pp. 20-21, the government pressed two arguments in reliance on the affiliate guidelines, including the argument it makes here that Appellees could "creat[e] affiliates whose sole purpose is to receive and administer Leadership Act funds" purportedly in order to "'cabin[] the effects' of the Policy Requirement" to the affiliates and leave Appellees themselves free to express their own views. *AOSI*,

133 S. Ct. at 2331 (quoting U.S. Br. 49 (JA1735)). As explained, the Court specifically considered and rejected that assertion because the Policy Requirement's effects by definition cannot be "'cabin[ed]'" to the affiliate receiving federal funds. *Id.* ("*Neither* approach is sufficient." (emphasis added)). Thus, although the government now pretends that issue was not before the Court, the Court's opinion—and the government briefs it quotes—show otherwise.

The government next suggests (at 32) that no "question involving foreign affiliates" was before the Court. That is both wrong and irrelevant. It has always been understood in this litigation that Appellees' affiliates are primarily foreign-incorporated, and the record is replete with evidence of that understanding. *See supra* pp. 21-23. The government's "affiliate guidelines" implementing the Policy Requirement, *see* JA19-24, were ostensibly modeled on other policy regimes that involve potential affiliation with foreign NGOs. *See, e.g.*, U.S. Reply App. 2a n.*, No. 12-10 (U.S. Apr. 15, 2013) (JA1767). The government contended that the institutional separation required by those guidelines was necessary—even though "circumstances in some countries may make it difficult for organizations to satisfy [them]," JA330—"because the conduct here is carried out in foreign areas" by entities whose views might be attributed to the United States, JA1796. *See supra* pp. 21-22. And the Supreme Court fully understood the foreign context of the government's arguments relying on the affiliate guidelines. *Supra* pp. 22-23. In

any event, the Supreme Court did not limit its analysis to affiliates in one location or another. *See supra* pp. 23-24. While the Court correctly described Appellees themselves as "a group of domestic organizations," *AOSI*, 133 U.S. at 2326, its rebuttal of the government's reliance on the affiliate guidelines drew no such distinction and did not purport to leave Appellees' foreign affiliates out of the discussion. Rather, the Court recognized that imposing the Policy Requirement on the U.S. Appellees' clearly identified affiliates—wherever incorporated—violates the First Amendment rights of the U.S. Appellees.

Finally, the government questions (at 36) the Supreme Court's conclusion that imposing the Policy Requirement on a U.S. organization's clearly identified affiliates would prevent the U.S. organization from freely exercising its First Amendment rights by inflicting the "price of evident hypocrisy." In particular, the government asserts that the threat of evident hypocrisy—*i.e.*, where the U.S. Appellee would either be forced to conform its own speech to the compelled speech of its clearly identified affiliate for the sake of internal coherence or else have its message tarnished by contradiction—is not actually likely to occur and in any event would not violate the First Amendment.

The Supreme Court concluded otherwise, however, and that issue cannot be relitigated. *AOSI*, 133 S. Ct. at 2331. The Court held here, as it has held elsewhere, that the First Amendment protects the integrity of a person's views and

expression from government intrusion, whether in the form of directly compelled speech or of state-imposed hypocrisy. *See, e.g.*, *id.*; *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2253 (2015) ("[T]he First Amendment stringently limits a State's authority to compel a private party to express a view with which the private party disagrees."); *Wooley v. Maynard,* 430 U.S. 705, 717 (1977) ("[W]here the State's interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual's First Amendment right to avoid becoming the courier for such message."); *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("[T]he action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."). The government cites no authority to the contrary.

Moreover, the government's suggestion that the chance of misattribution is low or would "dissipate with a simple disclaimer" has also been rejected and ignores the reality that the Supreme Court recognized—*i.e.*, that where a network of clearly identified affiliates speaks with one voice and operates to all outward appearances as a single entity, the government's compelled pledge will be attributed to each clearly identified affiliate once one affiliate is forced to avow it. *AOSI*, 133 S. Ct. at 2331; *cf. Walker*, 135 S. Ct. at 2248-2249 (license plate was

attributable to State as government speech where various factors, including use of state name and emblems, meant that license plate designs were "'often closely identified in the public mind with the [State]'"); *see also, e.g.*, JA1855 ("Pathfinder understands, however, that this is a two-way street and that negative action by any foreign affiliate—such as taking a public position at odds with other Pathfinder entities—can be imputed to the whole.").

Indeed, the government embraced the very same logic in defending its affiliate guidelines, contending that recipients of federal funding are "identified as working with the United States government," creating a "danger … that those entities' views [would] be misattributed to the United States." JA1824; *see supra* pp. 21-22. The government similarly explained that objective separation between the funding recipient and its affiliates was necessary to "guard against a public perception that the affiliate's views on prostitution and sex trafficking may be attributed to the recipient organization." JA21; *see supra* pp. 16-17. But there is no such separation between Appellees and their clearly identified affiliates. If the mere receipt of funding creates a likelihood that a private entity's views will be attributed to the United States Government, then the sharing of a common name, branding, logo, and mission surely does so.[9]

[9] The government suggests (at 36) that "evident hypocrisy" would result only if the foreign affiliate were newly created rather than a preexisting entity. But the Supreme Court did not suggest that, and if the foreign affiliate is "clearly

Moreover, requiring a U.S. Appellee to disclaim the speech of its affiliates and instead "speak[] only for itself" (Br. 36) intrudes on the U.S. Appellee's right to speak with one voice with all its branches and affiliates. Appellees choose to speak with one voice and adopt measures to ensure the consistency of their messaging, because doing so amplifies their message, extends the reach of their public-health work, and makes them more competitive for funding awards. *Supra* pp. 11-12. The government's facile suggestion that Appellees could simply announce to the world that they take inconsistent positions with their clearly identified affiliates would deny Appellees the right to express a consistent message (and associate) with their affiliates and the benefits that flow from that messaging (and association).

The government emphasizes (at 30) that Appellees and their foreign-incorporated affiliates are "legally separate entities." But the Supreme Court's reasoning, and the "evident hypocrisy" that results when one affiliate contradicts or distances itself from a message its affiliate is forced to avow, does not turn on corporate formalities. *AOSI*, 133 S. Ct. at 2331. It turns instead on the "clear[] identif[ication]" between affiliates, *id.*—*i.e.*, the shared characteristics that convey that each Appellee and its affiliates speak with a single voice. *Supra* p. 9-12. The

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identified" with the U.S. Appellee, then the "price of evident hypocrisy" results regardless of the age of the affiliate. *AOSI*, 133 S. Ct. at 2331.

government's view produces the absurd result that an Appellee's foreign branch office would receive the benefit of the injunction while a foreign-incorporated affiliate would not—even if the effect of the foreign affiliate's compelled speech on the U.S. Appellee is identical to that of the branch office, and even if the decision whether to incorporate within the foreign country is driven by factors having nothing to do with the Policy Requirement, including the government's own preference that Appellees conduct their work through separately incorporated affiliates rather than branch offices. *See supra* pp. 6-8.

Thus, although an injunction applicable only to Appellees would have ensured that they could receive Leadership Act funds without being required to comply with the Policy Requirement, it would not have "afford[ed] complete relief" for the First Amendment violation the Supreme Court identified. *Seibert*, 586 F.2d at 951. Unless the injunction extends to Appellees' affiliates—wherever they happen to be incorporated—Appellees still would not be able to speak freely themselves because the government's message "by its nature cannot be confined" to the particular affiliate that is compelled to espouse it. 133 S. Ct. at 2332.

II. THE INJUNCTION IS CLEAR

The government closes its brief by attacking the permanent injunction as insufficiently clear on the ground that it is unsure what "affiliate" means or how Appellees' affiliates should be identified. But the government shows no abuse of

the district court's "wide range of discretion in framing the injunction" by reference to the same term used by the Supreme Court. *Springs Mills*, 724 F.2d at 355.

Despite the government's purported ignorance, the record in this case has been clear for years about who Appellees' affiliates are. *See*, *e.g.*, JA25-327 (declarations discussing affiliates). The government itself used the term "affiliates" beginning in its 2007 regulations to describe the connections between NGOs that receive Leadership Act funds and their related entities. And when commenters later objected to the lack of any definition of "affiliate" in the guidelines, the government dismissed that suggestion by citing the "common usage" of the term. 75 Fed. Reg. 18,760, 18,761 (Apr. 13, 2010).

The district court explained that the "affiliates" covered by the injunction are those that meet the plain and ordinary meaning of that term—a class that is "almost certainly limited and ascertainable." SPA11. When read, as it must be, "in the context of the entire injunction and of [the court's] decision upon issuing the injunction"—which explains that the relevant foreign affiliates are those that are clearly identified with the U.S. Appellees—the "import of [the court's] language is clear." *In re Baldwin-United Corp.*, 770 F.2d 328, 339 (2d Cir. 1985). Each Appellee uses the same name, branding, and logo as its affiliates and operates within a common corporate framework toward a common mission. *See supra* pp.

8-12. For instance, CARE USA (a member of Appellee Interaction) is a member of CARE International, which is an international federation consisting of separately incorporated affiliates, including CARE Denmark, CARE India, CARE Japan, and CARE Thailand. *See supra* pp. 7; JA1928-1929. There is nothing unclear about those affiliations. And even if there were, the government has authority when awarding Leadership Act funds to request whatever information it deems necessary from grant recipients to identify their clearly identified affiliates. Indeed, it has had opportunities in this litigation to gain whatever additional clarity it needs. Appellees offered additional clarifying language to help further define the term affiliate—an offer the government declined even after the district court ordered the parties to meet and confer. *See* Dkt. 162, at 7; *supra* pp. 29-30 & n.7.

The government contends (at 40) that the district court did not allow sufficient opportunity to brief and argue issues relating to the injunction. In fact, the court entertained multiple rounds of extensive letter briefing, replete with nearly two thousand pages of exhibits, oral argument, and a fully briefed reconsideration motion. *Supra* p. 27. Those procedures were proper, and the government articulates no prejudice it suffered as a result of any alleged impropriety.

The government cites (at 40) *Loreley Financing (Jersey) No. 3 Ltd. v. Wells Fargo Securities*, LLC, 797 F.3d 160 (2d Cir. 2015), but that decision involved the

liberal policy of amendment under Rule 15, not the proper method for litigating a permanent injunction. *Id.* at 190-191 (discussing Fed. R. Civ. P. 15(a)(2)). In any event, this Court there endorsed the exchange of pre-motion letters and the use of a pre-motion conference as a proper means to "efficiently narrow and/or resolve open issues." *Id.* at 190. The district court here held a pre-motion conference to provide the litigants an opportunity to narrow and possibly resolve the case without further motion practice at a stage of the proceedings where all that remained was to implement a remedy for the constitutional violation identified by the Supreme Court. *See* Dkt. 110, at 2:2-4:9 (JA403-405) (summarizing district court's review of procedural background); *id*. at 22:25-23:12 (JA423-424) (explaining district court's view that "[t]he conflict here … narrow[s] to whether or not the government can enforce the [P]olicy [Requirement] as to" affiliates like "C[ARE] Kenya" of U.S. NGOs like "C[ARE] USA" that are "not … subject to the [P]olicy [R]equirement"); *id*. at 25:25-26:7 (JA426-427) (renewing district court's question "whether the parties have made any good faith efforts to try to [a]void further litigation"); *id*. at 30:14-16 (JA431) (explaining that legal dispute over affiliates reduces to competing readings of Supreme Court's decision in this case).

The government also had two years to refine its arguments before filing its motion for reconsideration, clarification, or modification—years the parties spent specifically discussing the scope of the permanent injunction and the identities of

Appellees' affiliates. Yet the government offered no new arguments, presented no new facts, and cited no new case law to support the position it had taken two years earlier. Its procedural complaints at this late date ring hollow.

The government's substantive complaints are equally meritless. In a scant two paragraphs, the government argues (at 41) that the injunction here is unclear because it covers Appellees "or their domestic and foreign affiliates." SPA26-27. But the district court's use of the common term "affiliates," with a particular and even more definite meaning in the context of these parties, reflects the Supreme Court's use of the term and did not violate the district court's broad discretion to fashion necessary relief. *See, e.g.*, *In re Baldwin-United*, 770 F.2d at 339 ("[A]n injunction [should] be specific and definite enough to apprise those within its scope of the conduct that is being proscribed." (quoting *Diapulse Corp. of Am. v. Carba, Ltd.*, 626 F.2d 1108, 1111 (2d Cir. 1980)). Although the government asserts that more was required, it points to no actual confusion over the scope of the injunction and cites no entity or example that presents any difficulty in deciding how to apply the injunction. Nor does the government mention that it had declined several opportunities to reach agreement with Appellees about mutually acceptable clarifying language, despite Appellees' repeatedly expressed willingness and a court order to do so. *See supra* pp. 29-30.

In any event, the government's argument provides no reason to deprive Appellees of the protection of the injunction. At most, the government's argument—if it had merit—would require marginal refinement by this Court or the district court to clarify that the term "affiliate" refers to an organization that shares the same name, brand, logo, and identity as any U.S. NGO; although not required, such clarification would be simple, consistent with the record and the Supreme Court's opinion, and would not warrant a reversal or any further proceedings. *See Ibeto Petrochem. Indus. Ltd. v. M/T Beffen*, 475 F.3d 56, 65 (2d Cir. 2007) (finding injunction "fully justified" but ordering district court to "modify its injunction with a specificity consonant with [the Court's] determination").

In the wake of a now four-year-old Supreme Court decision in Appellees' favor, the government has had numerous opportunities to resolve this case in a manner that is compelled by the Supreme Court's ruling and protects Appellees' First Amendment rights. When the government chose to keep litigating instead, the district court issued a permanent injunction that flows directly from the holding and reasoning of the United States Supreme Court. This Court should affirm.

CONCLUSION

The permanent injunction should be affirmed.

Respectfully submitted.

/s/ David W. Bowker

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November 3, 2017

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and Local Rule 32.1(a)(4)(A).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 13,661 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ David M. Bowker
DAVID M. BOWKER

November 3, 2017

From: Stoike, Jeffrey J
Sent: 26 Apr 2018 13:21:23 +0000
To: Bowman, Matthew (HHS/OGC)
Subject: Re: Call in number for PLGHA

Matthew,

I'm sorry for the confusion. I tried to send you the call in number at the outset of yesterday's PLGHA meeting but reception in the building didn't allow it to go through at that time. Hopefully Graham Higgins had good enough signal to get you the number in time.

Best,
Jeff

From: Bowman, Matthew (HHS/OGC) <Matthew.Bowman@hhs.gov>
Date: April 26, 2018 at 9:18:22 AM EDT
To: Stoike, Jeffrey J <StoikeJJ@state.gov>
Subject: Re: Call in number for PLGHA

Is there another meeting on that? I don't see one on my calendar

---

On: 26 April 2018 09:12, "Stoike, Jeffrey J" <StoikeJJ@state.gov> wrote:

(b)(6)

From: Huber, Valerie (HHS/OASH)
Sent: 8 May 2018 12:27:41 +0000
To: Bowman, Matthew (HHS/OGC)
Subject: RE: Event flyer - May 17
Attachments: (b)(5)

See attached.

From: Bowman, Matthew (HHS/OGC)
Sent: Tuesday, May 8, 2018 8:25 AM
To: Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov>
Subject: Re: Event flyer - May 17

(b)(5)

On: 08 May 2018 08:23, "Huber, Valerie (HHS/OASH)" <Valerie.Huber@hhs.gov> wrote:

(b)(5)

From: Lisa Correnti [mailto:lisa@c-fam.org]
Sent: Monday, May 7, 2018 9:52 AM
To: Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov>
Subject: Re: Event flyer - May 17

Do you have time for a brief call today or tomorrow?

> On May 7, 2018, at 3:15 AM, Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov> wrote:
>
> Lisa,
> I'd like to be a part of your event, but I have a conflict that I may not be able to rearrange. When do you need to know for sure?
>
> **From:** Lisa Correnti [mailto:lisa@c-fam.org]
> **Sent:** Sunday, May 6, 2018 10:24 PM
> **To:** Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov>
> **Subject:** Re: Event flyer - May 17
>
> Hi Valerie,
>
> We would like you to be a panelist on the panel with Trump admin reps and speak about prevention — how SRA provides the skills for all youth but specifically vulnerable youth navigate through adolescents successfully and not fall prey to homelessness, sexual exploitation, etc.

Thanks,
Lisa

On May 5, 2018, at 4:48 PM, Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov> wrote:

Hey Lisa,
Can you explain a little more what you are requesting? Am I being asked to moderate a panel?

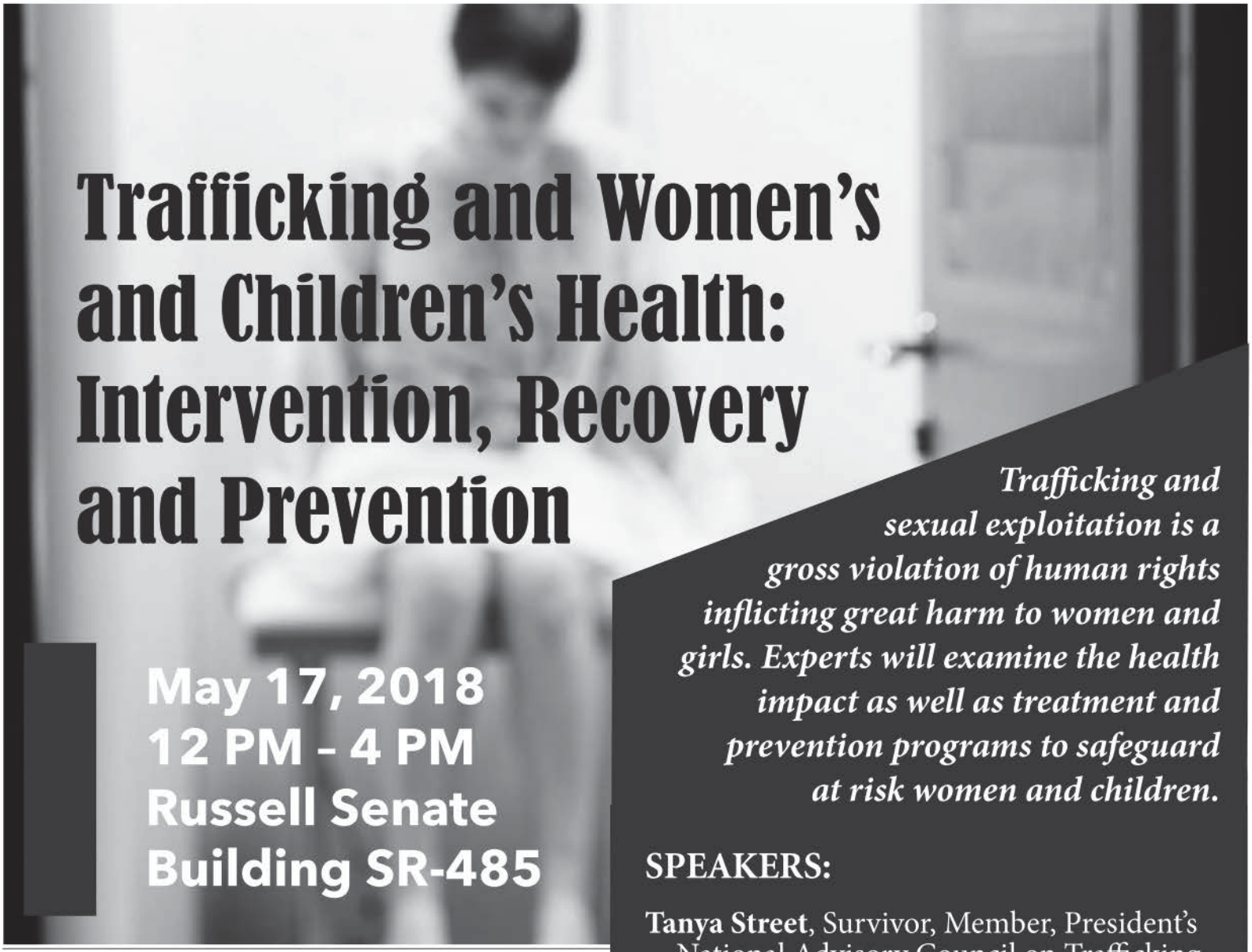
From: Lisa Correnti [mailto:lisa@c-fam.org]
Sent: Thursday, April 26, 2018 8:21 AM
To: Huber, Valerie (HHS/OASH) <Valerie.Huber@hhs.gov>
Subject: Event flyer - May 17

Valerie,

Attached is the event flyer. Since all govt reps are pending they are not listed. As well we are hoping Sen. Lankford will make opening remarks. It is a half day event but of course we would only expect you for your panel which is scheduled for 3pm.

Please let me know if I can provide anything additional.

Best regards,
Lisa



Trafficking and Women's and Children's Health: Intervention, Recovery and Prevention

May 17, 2018
12 PM – 4 PM
Russell Senate Building SR-485

Trafficking and sexual exploitation is a gross violation of human rights inflicting great harm to women and girls. Experts will examine the health impact as well as treatment and prevention programs to safeguard at risk women and children.

Box lunch served at 12 PM

ORGANIZERS:

Global Centurion Foundation
Center for Family and Human Rights (C-Fam)

CO-SPONSORED BY:

American Association of Pro-Life Ob-Gyns (AAPLOG)
Speaking Hope
The Justice Center
Center Against Forced Abortion
Operation Outcry
The Charles and Mary Crossed Foundation
Feminists Choosing Life of New York
Identifiable Me
Rahab's Hideaway
Civil Rights for the Unborn
Frederick Douglass Leadership Institute
Human Coalition

GLOBAL CENTURION
FIGHTING MODERN SLAVERY BY FOCUSING ON DEMAND

C-Fam

SPEAKERS:

Tanya Street, Survivor, Member, President's National Advisory Council on Trafficking

Dr. Donna Harrison, Ob-Gyn, President, AAPLOG

Dr. Yaro Garcia, Clinical Psychologist, Florida Gulf Coast University

Hope Green, Survivor and Service Provider

Dean Nelson, Pastor, National Outreach Director, Human Coalition

Cynthia Collins, Founder, Speak Hope

Chuck Donovan, President, Charlotte Lozier Institute

Betty McDowell, Heartbeat International, TIP Training Pregnancy Resource Centers

Marlene Carlson, Survivor and Service Provider

Laura Lederer, J.D., President, Global Centurion Foundation

From: Ghosh, Sudevi (CDC/OCOO/OGC)
Sent: 16 Nov 2017 22:06:39 +0000
To: Bowman, Matthew (HHS/OGC)
Subject: RE: (b)(5) PLGHA review

(b)(5) Thanks!

From: Bowman, Matthew (HHS/OGC)
Sent: Thursday, November 16, 2017 4:37 PM
To: Ghosh, Sudevi (CDC/OCOO/OGC) <ggq4@cdc.gov>
Subject: RE: (b)(5) PLGHA review

(b)(5)

Confidential pre-decisional deliberative process and attorney client privilege

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Matt Bowman
Deputy General Counsel
HHS OGC
202.868.9791
matthew.bowman@hhs.gov

From: Ghosh, Sudevi (CDC/OCOO/OGC) [mailto:ggq4@cdc.gov]
Sent: Thursday, November 16, 2017 3:10 PM
To: Bowman, Matthew (HHS/OGC)
Subject: FW: (b)(5) PLGHA review

Hi Matt,

(b)(5)

Sudevi

From: Baresch, Virginia (HHS/OGA)
Sent: Thursday, November 16, 2017 3:02 PM
To: Wynne, Maggie (HHS/IOS) <Margaret.Wynne@hhs.gov>; Alexander, Thomas (OS/OGA) <Thomas.Alexander@hhs.gov>; Bowman, Matthew (HHS/OGC) <Matthew.Bowman@hhs.gov>; Ghosh, Sudevi (CDC/OCOO/OGC) <ggq4@cdc.gov>
Subject: RE: (b)(5) PLGHA review

Hi all,

(b)(5)

Ginny Baresch, R.N., M.P.H.
Senior Public Health Advisor
Office of Global Affairs
U.S. Department of Health & Human Services
Email: Virginia.Baresch@HHS.GOV or FSB7@CDC.GOV
Office: 202-260-6339 Mobile: (b)(6)
www.hhs.gov/global

From: Stone, Lesley A [mailto:StoneLA@state.gov]
Sent: Wednesday, November 15, 2017 9:58 PM
To: vienna.r.nightingale.civ@mail.mil; richard.a.shaffer6.civ@mail.mil; terry.m.rauch.civ@mail.mil; john.c.daniel2.civ@mail.mil; john.a.casciotti.civ@mail.mil; Baresch, Virginia (HHS/OGA); Wynne, Maggie (HHS/IOS); Alexander, Thomas (OS/OGA); Bowman, Matthew (HHS/OGC); Achrekar, Angeli; Agurkis, Julie; Stone, Lesley A; Pollack, Margaret J; Prabhu, Nisha; Pompian, Shawn M; Mackey, Steven P; Olson, Susan P; Schwab, Carol M; Koek, Irene (USAID.GOV); Ocheltree, Kimberly J; McLaughlin, Mary (GC/G); Starbird, Ellen H (GH/PRH); Bates, Tamara R. (GC/GH); Birx, Deborah L; Khajavi, Kamiar; Dashtara, Abraham; Mattingly, Meghan (GH/OHA:Public Health Institute); Mani, Nithya M. (GH/OHA/IS); Stoike, Jeffrey J; Kulikowski, James; Frideres, Taryn F; Golden, Alma C. (GH/AA)
Subject: For comment/clearance by Friday, PLGHA review

Thanks to everyone for a helpful meeting earlier this week. That, plus your comments, have resulted in a clean version of the PLGHA review. A few notes:

-
-
- (b)(5)

(b)(5)

(b)(6) on Friday if it is easier to discuss over the phone.

Best,
Lesley

PS- thanks so much to Jeff Stoike for his work on this.

Official - SBU
UNCLASSIFIED

From: Mary McLaughlin
Sent: 17 Feb 2017 18:51:13 -0500
To: Bowman, Matthew (HHS/IOS)
Cc: Susan Pascocello;Tamara Bates
Subject: Re: (b)(5)

Hi Matt,

(b)(5)

Sudhevi. Please let us know if that would be useful.

Kind regards,
Mary

On Tue, Feb 14, 2017 at 6:25 PM, Bowman, Matthew (HHS/IOS) <Matthew.Bowman@hhs.gov> wrote:

(b)(5)

(b)(5)

(b)(5)

Please let me know if you have additional feedback (b)(5) Thanks!

Matt Bowman

HHS/IOS Policy Appointee, Legal

202.868.9791

matthew.bowman@hhs.gov

Admitted to the bar in D.C.

From: Mary McLaughlin [mailto:mamclaughlin@usaid.gov]
Sent: Tuesday, February 07, 2017 6:04 PM
To: Bowman, Matthew (HHS/IOS)
Cc: Susan Pascocello; Tamara Bates
Subject: Fwd: (b)(5)

Hi Matt,

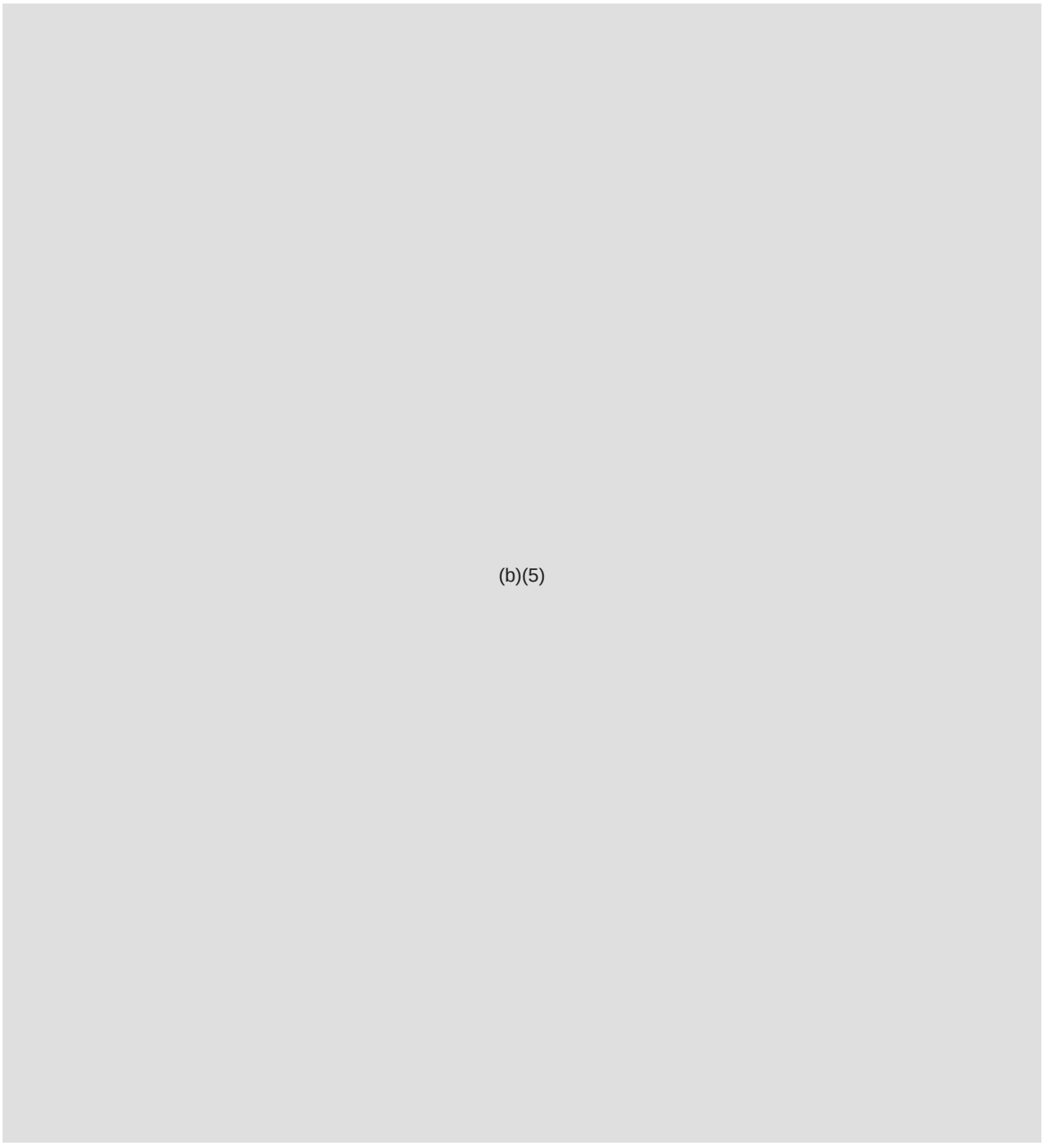
(b)(5)

understand that Sudevi Ghosh, CDC counsel, is the current point person at HHS for that litigation (her email is ggq4@cdc.gov).

Lastly, I'm adding Tamara Bates to this email. She also attended the meeting yesterday and is another resource in our office on the Mexico City Policy.

Please let us know if you have any questions.

Kind regards,
Mary



Mary A. McLaughlin

Assistant General Counsel for Global Health

U.S. Agency for International Development

202-712-0659

mamclaughlin@usaid.gov

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Mary A. McLaughlin
Assistant General Counsel for Global Health
U.S. Agency for International Development
202-712-0659
mamclaughlin@usaid.gov

From: Mary McLaughlin
Sent: 7 Feb 2017 08:40:33 -0500
To: Bowman, Matthew (HHS/IOS)
Cc: Susan Pascocello
Subject: Re: HHS

Hi Matt,

It was good to meet you yesterday. (b)(5)

(b)(5)

Kind regards,
Mary

On Feb 7, 2017, at 7:43 AM, Bowman, Matthew (HHS/IOS) <Matthew.Bowman@hhs.gov> wrote:

Susan. (b)(5)

(b)(5) Thanks!

On: 06 February 2017 17:19, "Susan Pascocello" <spascocello@usaid.gov> wrote:

Hi Matt -- It was nice to meet you today. Please let us know if we may be of assistance to you in any way. Best, susan

Susan K. Pascocello
Acting General Counsel
United States Agency for International Development
Phone: 202-712-0559 Facsimile: 202-216-3058
spascocello@usaid.gov

On Mon, Feb 6, 2017 at 4:14 PM, Bowman, Matthew (HHS/IOS) <Matthew.Bowman@hhs.gov> wrote:

> Hi Susan, this is Matt from HHS. And I think I may have misplaced Mary's business card already. Can you forward this to her? Thanks!